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In the Supreme Court of the United States

OCTOBER TERM, 1940

CHESTER GAINES AND THERESA GAINES, HUSBAND
AND WIFE, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE

No. 113

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

On April 29, 1940, this Court granted the Government's petition for a writ of certiorari to the Circuit Court of Appeals for the Third Circuit in *Helvering v. Janney*, No. 843, October Term, 1939, and now pending for hearing as No. 36, October Term, 1940. The decision herein is in conflict with the decision in the *Janney* case (108 F. (2d) 564). While we think the decision of the court below is

(1)

correct, we do not oppose the granting of the writ in view of the conflict and because it is important in the administration of the revenue laws that the question be settled.

Respectfully submitted.

ROBERT H. JACKSON,
Attorney General.

JUNE 1940.

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